

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of

Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems

Implementation of Section 309(j)
of the Communications Act -Competitive Bidding

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

### PETITION FOR PARTIAL RECONSIDERATION

The law firm of Blooston, Mordkofsky, Jackson & Dickens, on behalf of its paging clients<sup>1</sup> and pursuant to Section 1.429 of the Commission's Rules, hereby requests partial reconsideration of the interim licensing rules adopted in the Commission's <u>First Report and Order</u> ("the Order") in the above-captioned proceeding. The Commission should be applauded for establishing interim licensing rules which permit incumbent carriers to file expansion applications. However, the interim filing rights should be modified in order to (1) allow expansion from recently granted sites, (2) allow 75-mile expansions in sparsely populated areas, and (3) prevent unwarranted competing applica-

¹ The paging clients of Blooston, Mordkofsky, Jackson & Dickens have participated in earlier phases of this proceeding, under the names "the Paging Coalition" (for common carrier and exclusive private carrier paging licensees) and "the Paging Licensees" (for shared frequency paging carriers). However, the issues raised herein are for the most part common to all of the paging carriers represented by the firm.

<sup>&</sup>lt;sup>2</sup> WT Docket No. 96-18 and PP Docket No. 93-253, 61 Fed. Reg. 21380 (May 10, 1996).

tions. Otherwise, the purpose of the rule changes will be seriously undermined.

# I. Expansion Rights Should Be Extended To All Granted Pre-Freeze Applications.

The Commission's Order, which permits incumbent licensees to file expansion applications, is a step in the right direction. However, the Commission has limited the right of incumbent licensees to file such expansion applications to those sites within a 40-mile radius of co-channel stations which were licensed to the applicant as of February 8, 1996. This limitation unduly discriminates against incumbent licensees whose applications were pending as of February 8, 1996 (many for over a year) but have since been granted. It is respectfully submitted that incumbent licensees should be permitted to file expansion applications within 40 miles of any site which is ultimately authorized in response to an application filed prior to the effective date of the paging freeze (February 8, 1996). This should be the case even if the pending application is granted after market area licensing rules are adopted.

Applications filed by incumbent licensees prior to the freeze were <u>bona</u> fide facility proposals and were obviously not submitted to "game" the system. It is therefore illogical to limit expansion rights to applications <u>granted</u> before the freeze. The harmful impact of the Commission's approach is best demonstrated in the 931 MHz band. Scores of 931 MHz paging applications have been pending for well over a year. It has only been since the Commission's May 15, 1996 Public Notice (Report No. NCS-96-28-A), well after the freeze was imposed, that any appreciable number of 931 MHz

applications have been processed to grant. The processing delays associated with the 931 MHz paging applications have been beyond the control of the individual applicants, and have been exacerbated by the Commission's recent conversion to a new computer license database, and implementation of new application processing software for 931 MHz filings.

Thus, if two paging competitors (one operating in the VHF band, the other operating in the 931 MHz band) both submitted applications on May 1, 1995, it is likely that the VHF application would have been granted well ahead of February 8, 1996, while the 931 MHz application would still be pending. By mere happenstance of processing delays, two competitors who were equally diligent would suffer drastically different fates: The VHF licensee would be restricted by the freeze from filing applications for entirely new areas, but would at least be able to expand 40 miles in every direction from its existing sites, thereby substantially improving its coverage. The 931 MHz competitor, unable to expand at all, would thereby find that it is unable to effectively compete in the marketplace despite its diligence and investment in the paging system.

Incumbent paging licensees should not be penalized for Commission delays in the processing of their applications that resulted through no fault of their own. To do so deprives their public subscribers of urgently needed service improvements and unfairly discriminates among competing carriers. The expansions and modifications proposed in those applications which were still pending as of February 8, 1996, reflect 1995 (and before) demands for expanded service. Paging carriers must now be able to meet current and

future customer demands by filing for sites which are within 40 miles of prefreeze applications. Therefore, it is urgent that the Commission allow incumbent licensees to file expansion applications for new sites that are within a 40-mile radius of any site which was granted pursuant to an application filed prior to February 8, 1996. This would not frustrate or be otherwise inconsistent with the Commission's rationale in partially lifting the freeze.

# II. The Permitted Expansion Area Should Be Increased To 75 Miles in Sparsely Populated Areas.

In urban and suburban situations, the 40-mile expansion distance chosen by the Commission may serve as a reasonable accommodation to incumbent licensees. However, in less populated areas of the country, such as the Plains States, the Rocky Mountain region, and the Southwest (and especially in rural areas), this 40-mile limitation is far too restrictive. Often, the next town of any appreciable size (and therefore the natural area of service expansion) is more than 40 miles away.

Senator Larry Pressler, Chairman of the Senate Committee on Commerce, Science and Transportation, recognized this dilemma in his May 1, 1996 statement on the floor of the Senate (142 Cong. Rec. S4514, copy attached). In that statement, Senator Pressler urged the Commission to adopt a 75-mile expansion zone. Seventy-five miles would be a far more appropriate measure for expansion rights, in sparsely populated areas -- a good example of which is Senator Pressler's home state of South Dakota. The Commission should therefore adopt Senator Pressler's suggestion.

## III. Competing Applications Should Be Restricted To Incumbent Co-channel Licensees.

In light of the Commission's recent concerns about consumer fraud and paging application speculation, it is disturbing that the Commission has decided to allow any person or entity to file a competing application against incumbent expansion proposals, even if the competing applicant has no current claim to the frequency. See Order, at para. 26. Unfortunately, this procedure only invites speculators and competitors to file on top of <u>bona fide</u> expansion applications, and creates new opportunities for consumer fraud.

The Commission should allow competing applications to be filed only by other incumbent licensees that have co-channel facilities within 75 miles or less of the proposed expansion site triggering the filing window. This eligibility restriction would help to ensure that only legitimate proposals are submitted during the expansion process. Indeed, the purpose of the filing rights created by the Order is to allow existing licensees to extend their coverage in response to customer needs. There is no justification for giving third parties free reign to file on top of these expansion proposals. On the other hand, co-channel licensees with contiguous service areas should be allowed to vie for expansion rights in those areas where their systems meet.

The same statutory authority which allowed the Commission to restrict interim applications to incumbent expansion filings allows the Commission to restrict the class of potential competing applicants. See Order, at para. 27; U.S. v. Storer Broadcasting, 351 U.S. 192 (1956) (Commission can establish eligibility standards if supported by the record). The record in this proceeding

clearly demonstrates that incumbent licensees should be given a reasonable opportunity to respond to marketplace demands for expanded coverage. Order at para. 9. Non-incumbents will have an opportunity to compete for paging spectrum by participating in the auctions (if market area licensing is adopted).

### As Senator Pressler stated:

Another problem is created by the FCC's proposal to allow anyone to file a competing application against the expansion proposals of existing carriers. The FCC has defended the freeze as a mechanism to prevent filing by speculators and application mills, many of which use the application process to defraud consumers out of their life savings. This is a worthy goal. However, the new rule contains an ironic twist. If anyone can file a competing application against an existing paging carrier's expansion, speculation and fraudulent filings will be encouraged. The application mills that currently are not able to file applications will now target each and every expansion proposal, because it will be their only opportunity to practice their unholy trade. This will allow continued consumer fraud. It also will prevent bona fide paging companies from expanding their coverage, since any expansion proposal which is filed against will be held in abeyance and probably dismissed. This result would nullify the good work of the FCC in modifying the freeze. I strongly suspect it is an unintended result.

142 Cong. Rec. S4514, May 1, 1996.

Accordingly, the Commission should prevent this unintended result, by basing expansion rights on when a site was <u>proposed</u>, not when it was authorized.

### CONCLUSION

In light of the foregoing, it is respectfully requested that the Commission modify its interim paging licensing rules in the manner described above.

Respectfully submitted,

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logistical assistance to the West African Peacekeeping force. ECOMOG. Such assistance is necessary to keep BCOMOG actively engaged in the on-

the ground peace process.

Mr. President, I call upon the various warlords to respect the cease-fire and to pursue a peaceful solution. In addition, it is important to remind the warlords that an attempt by any faction to seize power by force or to undo the Abuja Accords will receive a strong American response.

While the ultimate resolution of the crisis remains the responsibility of the Liberians, the United States has an important role to play. The United States is the most influential foreign power in Liberia The United States must remain committed to seeking peace in Liberia. An engaged United States can help a Liberia that wants peace.

#### FCC'S PAGING FREEZE

Mr. PRESSLER. Mr. President, on February 8, 1996, the Federal Commumications Commission issued a notice of proposed rulemaking which proposed to fundamentally change the way in which paging systems are licensed. The FCC adopted a freeze on the filing of paging applications, which immediately brought about many harmful effects. I promptly expressed my concerns to the FCC about its actions and asked Chairman Hundt to do something about the freeze in a letter dated March, 15, 1996.

I am glad to say that on April 22. 1996, the FCC issued an order demonstrating it had listened to my concerns and the concerns of the industry with regard to the paging freeze. The FCC has modified the freeze so that existing paging carriers can apply to expend their systems by putting transmitters within 40 miles of stations they already are operating, so long as these stations were licensed before the freeze. The FCC also has decided against retroactively applying the freeze and will now process all applications which were filed before the February & freeze date.

These are two very important steps towards mitigating the harmful impact of the freeze, and I wish to congratulate the FCC on its response. However, it has come to my attention there are some significant shortcomings in the mechanics of the new rules. With minor clarifications, the FCC could eliminate these shortcomings.

In particular, the industry believesand several Members of Congress agree-75 miles would be a more appropriate zone of expansion as opposed to 40 miles. The increased distance would allow existing paging businesses to accommodate their customers' immediate needs and respond to new requests for paging service as factories. hospitals, and neighborhoods are constructed and the need for paging coverage expands.

Paging companies should be allowed

onse of providing 530 million in miles of any transmitter which has been licensed or which will be licensed based on an application filed before the freeze. The point is, many expansion proposals were filed by paging companies more than I year ago, and have been delayed at the FCC. These applicamons reflect expansions that were needed months ago. Indeed, these carriers now are receiving requests for further expansions. If we limit paging companies to a some 40 miles from transmitters already licensed and operating, the only expansion they may be able to achieve would be adding those locations for which they applied last year. Additional coverage needs in the coming months will go unmet.

Another problem is created by the FCC's proposal to allow anyone to file a competing application against the expansion proposals of existing carriers. The FCC has defended the freeze as a mechanism to prevent filing by speculators and application mills. many of which use the application process to defraud consumers out of their life savings. This is a worthy goel. However, the new rule contains an ironic twist. If anyone can file a competing application against an existing paging carrier's expansion, speculation and fraudulent filings will be encouraged. The application mills that currently are not able to file applications will now target each and every expansion proposal, because it will be their only opportunity to practice their unholy trade. This will allow continned consumer fraud. It also will prevent bone fide peging companies from expanding their coverage, since any expansion proposal which is filed against will be held in abeyance and probably dismissed. This result would nullify the good work of the FCC in modifying the freeze. I strongly suspect it is an unintended result.

To prevent this anomalous result, the FCC can make minor adjustments to its freeze modification order. First. allowing a 75-mile expansion zone; second, allowing the expansion sites to be established within 75 miles of any transmitter granted from an application filed before the freeze; and third. limiting competing applicants to other CATTIONS

It is vital the FCC take steps to mitigate the harmful effects of the freeze. The paging industry provides service to over 34 million subscribers. Industry members have been encouraged to make considerable investments to improve their services, and have relied in good faith on the FCC's published regulations. Paging services are designed to serve the needs of increasingly mobile customers. To be competitive, these businesses need to provide their service to the customers where and when they need it. If a paging service cannot respond to the needs of its existing and potential customers, it will not survive in this extremely competitive industry.

This competition has spurred technological advances in what can be comto apply for new transmitters within 75 municated over a pager. No longer is a

pager some simple little box that beens to let you know you should call your office. Today's pagers are vehicles for communicating written messages. For example, news organizations like Reuters now offer periodic summaries of breaking news stories through pagers. Pagers also provide cost-efficient means of communicating within large factory complexes. Additionally, we must not forget the lifesaving contribution these services make when used by doctors, embulance crews, and critically ill patients, to summon 24sistance in the event of an emergency.

The bottom line, Mr. President, is that this technology must be allowed to grow. That was the basis for my letter in March. At the same time, the process must not be so full of loopholes as to allow the unscrupulous to benefit at the expense of consumers. That is the challenge faced by the FCC. It has begun meeting the challenge by modifying its freeze on the filing of paging applicants. The flaws in its initial proposal should prove easy to address. As chairman of the Senate Committee on Commerce, Science, and Transportation. I stand ready to help this process in any reasonable manner.

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, 4 years ago when I commenced these daily reports to the Senate it was my purpose to make a matter of daily record the exact Federal debt as of the close of business the previous day.

In that first report, February 27, 1992. the Federal debt the previous day stood at \$3,825,891.293,066.80, as of the close of business. The point is, the Federal debt has since shot further into the stratosphere.

As of yesterday at the close of business, a total of \$1.276,157.534.167.42 has been added to the Federal debt since February 26: 1982, meaning that as of the close of business yesterday. Tuesday, April 30, 1996, the Federal debt stood at \$5,102,048,827,234.22. On a per capita basis, every man, woman, and child in America owes \$19.271.28 as his or her share of the Federal debt.

#### TRIBUTE TO VICE ADMIRAL JOHN BULKELEY

Mr. WARNER Mr. President, I rise today to recognize the dedication, public service and patriotism that personified the life of Vice Admiral John Duncan Bulkeley, USN. Admiral Bulkeley, who passed away on April 6, was one of the most highly decorated combat veterans of World War II, and served nearly 60 years of active duty during his career.

A native of New York City. Admiral Bulkeley entered the U.S. Navy after graduating from the Naval Academy at Annapolis, and was commissioned in March of 1934. He began his Navy career as a junior watch officer aboard the croiser Indianapolis. He then spent time on the carrier Scratoga and as an

#### CERTIFICATE OF SERVICE

I, Richard D. Rubino, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 6th day of June 1996, I caused to be delivered by first-class U.S. mail, postage prepaid, a copy of the foregoing **Petition for Partial Reconsideration** to the following:

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